

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RANDY SIFUENTEZ,

Petitioner,

v.

UNKNOWN,

Respondent.

Case No. 2:21-cv-01244-WBS-JDP (HC)

FINDINGS AND RECOMMENDATIONS
THAT RESPONDENT'S MOTION TO
DISMISS BE GRANTED

OBJECTIONS DUE IN FOURTEEN DAYS

ECF No. 20

Petitioner Randy Sifuentez, a state prisoner, proceeds on his first amended petition for a writ of habeas corpus under 28 U.S.C. § 2254. ECF No. 14. Respondent has filed a motion to dismiss, ECF No. 20, arguing that petitioner's conviction is not yet final and, in the alternative, that his claims are unexhausted. Petitioner has filed a brief opposition to the motion. ECF No. 22. I recommend that respondent's motion be granted.

No habeas rule explicitly applies to a motion to dismiss a habeas petition, *see Hillery v. Pulley*, 533 F. Supp. 1189, 1194 (E.D. Cal. 1982) ("Motion practice in habeas corpus is not specifically provided for in the rules but must be inferred from their structure and the Advisory Committee Notes."), but the Court of Appeals has construed such a motion as a request for the court to dismiss under Rule 4 of the Rules Governing § 2254 Cases. *See O'Bremski v. Maass*, 915 F.2d 418, 420 (9th Cir. 1991). Under Rule 4, I evaluate whether it "plainly appears" that the petitioner is not entitled to relief and, if so, recommend dismissal of the petition.

Petitioner's conviction is not yet final and, under *Younger v. Harris*, 401 U.S. 37 (1971), I must abstain from considering his claims. Petitioner has a petition for resentencing pending in the Stanislaus County Superior Court. ECF Nos. 20-1 & 21-9. He does not contest the non-


1 finality of his conviction, but argues that there has been no action taken on his petition for
2 resentencing for a year and a half. ECF No. 22 at 2. That may be, but the statute of limitations
3 for his federal habeas claims will not begin to run until his conviction has become final in state
4 court. 28 U.S.C. § 2244(d). Thus, contrary to his contentions, he was not required to file this
5 action to preserve his claims. He may seek federal review of his claims once his conviction has
6 become final and he has exhausted his state court remedies.¹

7 For the foregoing reasons, I recommend that respondent's motion to dismiss,
8 ECF No. 20, be GRANTED and the first amended petition be dismissed.

9 These findings and recommendations are submitted to the U.S. district judge presiding
10 over the case under 28 U.S.C. § 636(b)(1)(B) and Local Rule 304. Within fourteen days of the
11 service of the findings and recommendations, the parties may file written objections to the
12 findings and recommendations with the court and serve a copy on all parties. That document
13 must be captioned "Objections to Magistrate Judge's Findings and Recommendations." The
14 presiding district judge will then review the findings and recommendations under 28 U.S.C.
15 § 636(b)(1)(C).

16
17 IT IS SO ORDERED.

18
19 Dated: April 8, 2022


20 JEREMY D. PETERSON
21 UNITED STATES MAGISTRATE JUDGE

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23
24 ¹ There are limited exceptions to the abstention doctrine in *Younger*. A federal court may
25 intervene in state proceedings upon a showing of "bad faith, harassment, or any other unusual
26 circumstance that would call for equitable relief." *Younger*, 401 U.S. at 45. Petitioner bears the
27 burden of establishing that his circumstances fit into this exception, and he has not alleged facts
28 indicating that abstention should not apply. See *Woodfin Suite Hotels, LLC v. City of Emeryville*,
Nos. C 07-1719 SBA, C 06-1254 SBA, 2007 U.S. Dist. LEXIS 44079, 2007 WL 1655792 at *3
(N.D. Cal. June 7, 2007) ("The plaintiff bears the burden to establish that an exception to *Younger*
exists.").